BORA LASKIN LAW LIBRARY
3 1761 04866 6572

DALHOUSIE LAW SCHOOL

and

FACULTY OF LAW
UNIVERSITY OF TORONTO

MATERIALS ON CONFLICT OF LAWS

VOLUME I

July 1999

John Swan

Faculty of Law, McGill University
and
Stikeman, Elliott
Montréal

and

Vaughan Black

Dalhousie Law School
Halifax

BORA LASKIN LAW LIBRARY
AUG 2 3 1999
FACULTY OF LAW
UNIVERSITY OF TORONTO

DALHOUSIE LAW SCHOOL

and

FACULTY OF LAW
UNIVERSITY OF TORONTO

MATERIALS ON CONFLICT OF LAWS

VOLUME I

July 1999

John Swan

Faculty of Law, McGill University
and
Stikeman, Elliott
Montréal

and

Vaughan Black

Dalhousie Law School
Halifax

Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

https://archive.org/details/materialsonconfl01swan_18

Table of Contents

INTRODUCTION

1. **The Questions Central to the Conflict of Laws** 1

2. **Note on the Materials** 3

3. **The Purpose of the Materials** 6

4. **Note on Uniform Laws** 8

5. **What is a "Conflicts" Problem?** 11

Pleadings; Statement of Claim 13

Statement of Defence 14

Reply 14

PART A

I CHOICE OF LAW

Chapter 1

1. **Introduction** 16

2. **The Choice of Law Process** 17

3. **The Structure of Conflicts Analysis** 19

Table 1 21

Chapter 2

Choice of Law in Contract

A Note on the Historical Development of the Choice of Law Process 25

Etler v. Kertesz 29

Notes 35

The Assunzione 38

Questions and Notes 41

Amin Rasheed Shipping Corporation v. Kuwait Insurance Co. 45

Notes 52

The Effect of an Express Choice of Law Clause 54

Vita Foods Products Inc. v. Unus Shipping Co. Ltd. 54

Questions and Notes 60

International Sale of Goods Act, 1988 63

Some Further Problems of Choice of Law in Contracts 65

Ross v. McMullen 66

Questions and Notes 69

Review and Further Examination of Typical Cases 73

Bondholders Securities Corp. v. Manville 74

Notes 75

Charron v. Montreal Trust 76

Notes 79

Imperial Life Assurance Co. v. Colmenares 80

Notes 84

Ralli Brothers v. Compania Naviera Sota y Aznar 87

Notes and Questions 91

Chapter 3

Choice of Law in Torts

Introduction 92

Summary of the Development of Tort Choice of Law Rules 94

Chaplin v. Boys 97

Questions and Notes 109

McLean v. Pettigrew 111

Notes 114

O'Connor v. Wray 116

Notes 121

Grimes v. Cloutier 124

Prefontaine v. Frizzle; Cuddihey v. Robinson 130

Notes and Questions 132

Tolofson v. Jensen 134

Post-*Tolofson* developments 157

The Insurance Context 167

Chapter 4

Escape Devices

1. **Introduction** 170

2. **The Substance/Procedure Distinction** 170

Table 2 171

Toronto-Dominion Bank v. Martin Estate 172

Alberta Treasury Branches v. Granoff 176

Notes and Questions 179

Block Bros. Realty Ltd. v. Mollard & Detra Holdings Ltd. 180

Questions and Notes 185

J. D'Almeida Araujo v. Sir Frederick Becker & Co. Ltd. 188

Questions and Noted 192

3. **Renvoi** 197

Re Annesley 200

Notes and Questions 202

4. **Characterization** 204

Haumschild v. Continental Casualty Company 204

Levy v. Daniels' U-Drive Auto Renting Co. 207

Notes and Questions 209

Chapter 5

Recognition and Enforcement of Foreign Judgments

Introduction 212

Recognition and Enforcement; The Common Law Rules 213

Henry v. Geoprosco International Ltd. 220

Notes 221

Black-Clawson International Ltd. v. Papierwerke Waldhof-Aschaffenburg A.G. 223

Notes 226

De Savoye v. Morguard Investments Limited et al 227

Notes and Questions 245

Minkler and Kirschbaum v. Sheppard 245

Notes 248

Braintech, Inc. v. Kostiuk 249

Judgments that will be Refused Enforcement 258

1. Public Policy 259

Boardwalk Regency Corp. v. Maalouf 259

Notes 269

Beals v. Saldhana 269

2. Foreign Tax Claims 285

3. **Foreign Penal Claims** 288

Huntington v. Attrill 288

Note 291

4. **Foreign Judgments Concerning Land** 291

Duke v. Andler 291

Questions and Notes 294

Statutory Provisions and International Agreements 294

1. **Provincial Statutes** 294

(a) Reciprocal Enforcement Legislation 294

Reciprocal Enforcement of Judgments Act 295

Uniform Enforcement of Canadian Judgments Act 298

Note 302

(b) Arbitration Awards 303

Schreter v. Gasmac Inc. 304

(c) Other provincial Legislation 313

2. **Canadian Statutes and International Agreements** 315